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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,533	04/01/2004	Robert F. Sinclair	7456	1578
7590	06/28/2006		EXAMINER	
Paul M. Denk Ste. 170 763 S. New Ballas Road St. Louis, MO 63141			NGUYEN, THUKHANH T	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/815,533	SINCLAIR, ROBERT F.
	Examiner Thu Khanh T. Nguyen	Art Unit 1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 April 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 21 and 22 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 21-22 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

*Claim Objections*

1. Claim 22 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 21. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

*Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross (4,569,649) in view of Underwood (6,347,931).

Gross discloses a press machine for making building blocks, comprising a first and second compression chambers (34a-b, 60), a ram with a ram head (70) capable of advancing into the mold to compress the material into a block (col. 5, lines 30-35), a fill chamber, or a feed chamber (61) arranged linearly with the ram and the compression chamber (Fig. 4, 60, 61, 70), a gate (73) vertically movable at the end of the mold chamber (60) and capable of opening and closing the mold chamber by an actuator (col. 5, lines 36-59), and a control system (180) having a plurality of timers (182-184) for controlling the operation of the hydraulic cylinder (94) for controlling the movement of the gate and the ram head (col. 10, line 1 to col. 11, line 26).

Gross fails to disclose that the compression chamber include a ridge for forming an impression on the forming block.

Underwood discloses a block forming machine, comprising a ram (21) slidable into a filling chamber (46) and a pressing chamber or a ramming chamber (28), a hydraulic actuated gate (70) located at the end of the pressing chamber, wherein the pressing chamber having a design on the chamber surface, such as tongues and grooves to form a block with surface features (col. 6, line 62 to col. 7, line 8).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Gross by providing a pressing chamber having a textured surface as taught by Underwood in order to form blocks having texture features on the surface.

4. Applicant's arguments filed April 17, 2006 have been fully considered but they are not persuasive.

The Applicant argued that the prior art fails to disclose an apparatus for forming blocks from waste material, or clay. However, this is the intended uses of the apparatus, and does not effect the structures of the apparatus. The current invention includes blocks made from sand, fly ash, or ground wood as the compression material, which have similar properties with those blocks made from earth as disclosed by Gross or Underwood. Therefore, Gross and Underwood's apparatuses are capable of forming building blocks by different material. It has been held that a functional limitation asserted to be critical for establishing novelty may, in fact, be an inherent characteristic of the prior art. The applicants is required to prove that the subject matter shown in the prior art does not necessarily possess the characteristics relied on. *In re Schreiber*, 128 F. 3d 1473, 1478, 44 USPQ 2d, 1432

(Fed. Cir. 1997); *See also, In re Spada*, 911 F 2d 705, 708, 15 USPQ 2d 1655, 1658 (Fed. Cir. 1977); *In re Best*, 562 F. 2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

The Applicant further alleged that the prior art fails to disclose a timer and a control panel for controlling the action of the ram, the fill of the hopper, and the gate. The examiner respectfully disagrees. Gross discloses a control system connected to a plurality of timers for controlling the gate (col. 10, line 1-5), the ram (col. 10, lines 16-59).

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gupta Yogendra can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TN



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